

REGION 6 EXECUTIVE SUMMARY

TOPIC: Falcon Refinery Superfund Site, SE Ingleside, Texas

DATE: 09/17/13

CONTACT: Brian Mueller, Bob Werner, Gloria Moran

PURPOSE: Enforcement Update

BACKGROUND/HISTORY:

Jun 2004: Two AOCs (Removal AOC and Remedial AOC) issued to National Oil Recovery Corporation (NORCO). RI/FS AOC for Falcon Refinery as a Superfund Alternative Site.

2010

Feb 2010: Superior Crude Gathering, Inc. (Site's current lessee) had a large oil spill at the Site (spill cleaned up by Superior).

Feb 2010: NORCO advised EPA that it was financial unable to continue performance of Removal and RI/FS actions.

Feb. 2010 to March 2011:

EPA supports NORCO's attempt to sell the refinery because NORCO informs EPA that the sale proceeds would be used to finance the remaining requirements of the two orders.

2011

Feb 2011: NORCO advises EPA that a sale to a prospective purchaser is imminent, but does not close on the designated closing day.

Mar 2011: EPA invoked work takeover provisions in Removal and Remedial Orders for default of both orders. EPA also sends notice that EPA intended to perfect a lien on the property.

Apr 2011: EPA received \$1,000,000.00 from NORCO's two letters of Credit. (\$500,000.00 each deposited into two separate Special Accounts.

May 2011: NORCO entered into an Agreed Order to resume removal action.

Sep 2011: NORCO entered into an Agreed Order to resume RI/FS action.

Sep 2011: Site listed on the NPL.

Oct 2011: EPA sent to NORCO Notice of Deficiencies involving remedial action.

Dec 2011: For the second time, EPA found NORCO to be in default in the performance of the RI/FS Order and commenced a work takeover. EPA continues to perform RI/FS.

2012

Feb 2012: NORCO sells the Falcon Refinery Site to Lazarus Texas Refinery I, LLC (LTRI). Letter Agreement for this sale identifies Lazarus Energy Holdings, LLC (LEH) or LTRI (LEH's subsidiary) as buyers of the Falcon Refinery. The Letter Agreement identifies NOROC and Norcorom Industries, SRL as sellers of the Falcon Refinery. Letter Agreement also states that "... LEH and LTRI, jointly and severally, assuming and being solely responsible for costs, expenses and penalties in any way relating to ... the EPA mandated clean-up contemplated and provided for under the AOC's and Agreed Orders." John Carroll signed the Letter Agreement as Director for LEH and as the Director for LTRI.

Feb 29, 2013: LTRI becomes the Falcon Refinery's owner of record.

Mar 2012: EPA sent letter to NORCO demanding payment of \$209,036.12 to comply with RI/FS order.

Sep 2012: EPA Cincinnati sends notice of non-compliance letter to NORCO for failure to pay past due amount of \$209,036.12.

Dec. 2012 NORCO's counsel advises Region in phone conversation that Superior had a second oil spill at the Site (spill cleaned up by Superior).

2013

Jan. 2013: Region 6 referral of Superior Oil to DOJ alleging OPA violations by Superior.

July 2013: CERCLA 104(e) Information Request sent to NORCO requesting:

- 1) information concerning the assumption of responsibilities by LTRI for costs, expenses and penalties; and
- 2) financial information to evaluate NORCO's obligations for the Site (inability to pay information).

Aug. 2013: CERCLA 104(e) Information Request sent to LTRI requesting:

- 1) information relating to intent to be responsible for NORCO's costs, expenses and penalties involving the Removal/Remedial AOCs issued to NORCO,
- 2) information concerning its relations to its numerous related business entities, and
- 3) information concerning its possible status as a bona fide prospective purchaser (BFPP).

Aug 26, 2013: EPA received NORCO's CERCLA 104(e) response. EO's review of NOROC's response revealed numerous unanswered issues of concern.

Sep 18, 2013: EPA received LTRI's CERCLA 104(e) response. EO has not yet reviewed LTRI's response.

RECOMMENDATIONS:

- Consideration for EPA to file lien on the Falcon Refinery to protect its interests in past and future removal and remedial costs.
- Follow-up CERCLA 104(e) letter to NORCO to address data gaps revealed by NOROC's Aug. 2013 CERCLA 104(e) response.
- Based upon review of LTRI's response, determine if LTRI, as the Refinery's current owner of record, should be treated as a BFPP or should be treated as a Potentially Responsible Party (PRP).